S.B. CIVIL WRIT PETITION NO.4513/2004.

KISHAN LAL
VS.
THE JUDGE, INDUSTRIAL TRIBUNAL & LABOUR COURT, UDAIPUR.

DATE OF ORDER : 29.03.2007.

HON'BLE MR. GOVIND MATHUR, J.

Mr. Sanjeet Purohit for the petitioner/s.
Mr. Tribhuvan Gupta for the respondent/s.

By this petition for writ validity, propriety and correctness of the award dated 03.09.1999 passed by Labour Court, Udaipur is questioned.

The appropriate government under its notification dated 09.09.1999, referred an industrial dispute to the Labour Court, Udaipur in the terms as to whether not to allow workman Shri Kishanlal s/o Dadam Chand Meghwal to join on duties w.e.f. 01.04.94 by the employer, Dean, Science College, Mohanlal Sukhadia University, Udaipur is legal and justified? If not, then for what relief, the workman is entitled?

In the statement of claim, the workman stated that he was employed with the employer in its Physical Education Department w.e.f. 01.10.1992, but for no just and valid reason, he was not permitted to work after 01.04.1994. According to the workman, his discontinuation from work amounts to

retrenchment from service as defined under Section 2(oo) of the Industrial Disputes Act, 1947 and that was effected without adhering mandatory condition precedent for a valid retrenchment.

In written statement, the employer denied the factum of retrenchment with a specific assertion that the workman himself left the service voluntarily. The Labour Court while accepting the employer's version, by the award impugned, reached at the conclusion that the workman w.e.f. 01.04.1994 left the service voluntarily and as such, he was never retrenched. By considering the case of the petitioner, as an abandonment from service, the Labour Court while answering the reference, refused for grant of any relief to the workman.

Being aggrieved by the same, this petition for writ is preferred with a contention that the Labour Court failed to appreciate the fact that the employer nowhere entered in its record that the workman was absenting from duties. According to the petitioner, there was no evidence available on record to prove that the workman himself left the service.

Heard the counsel for parties and also examined the award impugned.

From perusal of the award, it is apparent that the Labour Court thoroughly examined the evidence available on record, including the experience certificates produced by the workman to prove his working with the employer and also the statements given by Shri S.N. Abbas, who specifically stated that after 01.04.1994, the workman never reported on duties. The finding given by the Labour Court is based on material evidence and such finding of fact is not require to be interfered by this Court under Article 226 and 227 of the Constitution of India, if not perverse. I do not find any such perversity in the award impugned.

Beside the above, it is also pertinent to note that according to the workman himself, he was retrenched from service w.e.f. 01.04.1994, but at the first instance, he raised industrial dispute on 16.05.1997 i.e. after a lapse of more than three years from the date of alleged discontinuation from service. No reason is given for causing such delay in raising or agitating the cause even before the employer. In such circumstances, the normal behaviour is making immediate approach to the employer by the aggrieved workman. The conduct of the petitioner supports the stand of the employer that the workman left the service voluntarily to avail some better alternative employment.

In view of whatever discussed above, I do not find any reason to interfere with the award impugned. The petition for writ, therefore, is dismissed.

(GOVIND MATHUR)J.

Anil/